

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

PETER J. SMITH,

Plaintiff,

v.

WAFFLE HOUSE, INC., WAFFLE
HOUSE, and WALTER EHMER, in
his official capacity as Waffle House
CEO,

Defendants.

CASE NO. 2:19-CV-1033-WKW
[WO]

ORDER

On October 1, 2020, the Magistrate Judge filed a Recommendation (Doc. # 8) to which Plaintiff submitted an objection (Doc. # 9). The court has conducted a *de novo* review of those portions of the Recommendation to which objection is made. *See* 28 U.S.C. § 636(b). Having carefully reviewed the record and the Recommendation in light of Plaintiff’s objection, the court concludes that the Recommendation is sound and that the objection is due to be overruled.

Plaintiff objects to the recommended dismissal of this lawsuit, citing “Title VII,” presumably Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e–2000e-17. Title VII prohibits an *employer* from “discriminat[ing] against any individual with respect to his compensation, terms, conditions, or privileges of

employment” because of an employee’s sex or race. § 2000e-2(a)(1). The person bringing the Title VII claim must be an employee of the defendant. *See* § 2000e(f) (“The term ‘employee’ means an individual employed by an employer . . .”). In his complaint, Plaintiff does not allege that he is an employee of Waffle House. Rather, he alleges that he did not receive a receipt, presumably for his meal, and that his “card was swiped twice” by the “waitress” who then “entered the card number.” (Doc. # 1, at 1–2.) Title VII does not govern relationships between one of Waffle House’s employees and a third-party customer.

Accordingly, it is ORDERED as follows:

- (1) Plaintiff’s objection (Doc. # 9) is OVERRULED;
- (2) The Recommendation (Doc. # 8) is ADOPTED; and
- (3) This action is DISMISSED with prejudice prior to service of process, pursuant to 28 U.S.C. § 1915(e)(2)(B)(i).

DONE this 27th day of October, 2020.

/s/ W. Keith Watkins
UNITED STATES DISTRICT JUDGE